

Legal Education Series No. 4

COMMUNITY HEALTH CELL

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Bangalore-560034 -

India

Do You Know Your Fundamental Rights ?

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Your Fundamental Rights

The Constitution of India, Part III, guarantees Fundamental Rights to the citizens. These rights represent the basic values cherished by the people of this country since Vedic times and they are meant to protect the dignity of the individual and create conditions in which human beings can develop their personality to the fullest extent. Without these rights the citizens' moral and spiritual life will remain stunted and they will not be able to develop their potentialities.

These rights are wide ranging and comprehensive and they fall under six heads, namely, right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to Constitutional remedies.

These are not privileges or favours but basic rights to which every citizen is entitled. However, since they are not absolute or unlimited, their exercise can be reasonably restricted by the State on various grounds.

The purpose of this leaflet on Fundamental Rights is to raise the legal consciousness of citizens with regard to their rights so that they may exercise them responsibly and prevent government authorities and others from encroaching on them, and in case of their violation, find redress through legal remedies provided in the Constitution.

Which are your Fundamental rights

- | | |
|----------------------------------|---------------------|
| 1. Right to Equality | (Articles 14-18) |
| 2. Right to Freedom | (Articles 19 & 358) |
| 3. Protection Against Conviction | (Article 20) |

4. Protection of Life and Personal Liberty (Article 21)
5. Protection Against Arrest and Detention (Article 22)
6. Right Against Exploitation (Articles 23-24)
7. Right to Freedom of Religion (Articles 25-28)
8. Cultural and Educational Rights (Articles 29-30)
9. Right to Constitutional Remedies (Articles 32-33 and 359)

I. RIGHT TO EQUALITY (Articles. 14-18)

Under these Articles the Constitution guarantees the following rights:

1. Equality before the law

This means the absence of any special privilege in favour of any individual and the equal subjection of all classes of citizens to the ordinary law. In other words it means, that there shall not be any discrimination before the law on the basis of rank, office etc.

2. Equal Protection of the Law

It implies equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed by the law. In other words, there should be no discrimination between one person and another if, as regards the subject matter of the legislation, their position is the same.

This principle does not take away from the State the power of classifying persons on the basis of their legitimate needs. Thus the State can make special laws for the benefits or protection of Scheduled Castes, Scheduled Tribes etc. Differential treatment to this class of citizens does

not violate Article 14 which guarantees equal protection only when there is no reasonable basis for such differentiation.

3. *Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Art. 15)*

The State cannot discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Under this right the State has guaranteed to all citizens adult suffrage (Art.326) equality in employment, equal eligibility for the office of President, membership of Parliament etc. It also gives every citizen right of access to and use of institutions, places, roads, wells, restaurants, hotels, etc., maintained by State funds intended for the use of general public.

The Article does not authorise any citizen to use somebody else's private property like wells or roads or swimming pools etc. At the same time Article 15 (3) and (4) gives power to the State to make any special laws for the benefits of women and children, Scheduled Castes, Scheduled Tribes etc. Thus the provisions of maternity relief for women workers (Art.42), free education for children (Art. 45) or measures for prevention of their exploitation, [Art. 39(f)], reservation of seats for Backward Classes of citizens and special provisions for their advancement, do not violate Article 15.

4. *Equality of opportunity in matters of public employment (Art. 16)*

- * This Article guarantees:
Equal opportunities for all citizens in matters of employment and appointment to any government office [Art.16 (1)].
- * No discrimination be made on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them in respect of

any employment or office under the State [Art. 16 (2)].

Exceptions

- * The State has power to reserve posts in favour of Backward Classes of citizens if they are not adequately represented in Government services. [Art. 16 (4)].
- * Offices connected with religious or denominational institutions, are to be reserved for members of that particular religious or denomination [Art. 16 (5)].
- * Parliament has right to prescribe any requirement regarding residence in a State in respect of any particular class or classes of employment in that State [Art. 16 (3)].

5. *Abolition of Untouchability (Art. 17)*

This Article declares:

- i. Untouchability is abolished and its practice in any form is forbidden, and
- ii. if a person tries to enforce 'Untouchability' in any form, he will be guilty of an offence, punishable in accordance with Law.

Note

The word 'untouchability' is not defined in the Constitution but it is meant to denote different practices in different parts of India, as developed through the ages.

The Parliament passed the 'Untouchability' (Offences) Act in 1955 which was amended in 1976. It is now known as the Protection of Civil Rights Act 1955. This Act prescribes punishments for various types of 'Untouchability' offences.

6. *Abolition of Titles (Article 18)*

This article prohibits: (i) the State from conferring titles on citizens except military or academic

distinctions; (ii) citizens from accepting titles from foreign States; (iii) non-citizens who hold any office of profit or trust under the State from accepting any title from any foreign State without the consent of the President.

Note

Titles are abolished as they tend to create unnecessary distinctions among the people, and such distinctions would not be in line with the ideal of social, economic and political justice. What Article 18 prohibits is the conferment of titles and not of awards. Hence we have such awards as Bharat Ratna, Padma Shri etc.

II. RIGHT TO FREEDOM

The right to freedom guaranteed under Article 19 can be classified under the following six heads:

1. Freedom of Speech and Expression
2. Freedom of Assembly
3. Freedom to Form Associations or Unions
4. Freedom to Move Freely Throughout India
5. Freedom to Reside and Settle in any Part of India.
6. Freedom to Practise any Profession

Note

There are the liberties of every citizen. They are not absolute as they are qualified and may be limited by the State, e.g., my right to move anywhere does not enable me to enter any premises I like. The restrictions imposed on these liberties are supposed to be for the public good. Let us now look at the restrictions that the State can impose on these rights.

1. Freedom of Speech and Expression

The right to freedom of speech and expression of citizens is subject to the power of the State

to make any laws imposing reasonable restrictions in the interest of:

- i. security of the State,
- ii. sovereignty and integrity of India,
- iii. friendly relations with foreign States,
- iv. public order,
- v. decency, and
- vi. morality.

The State can also make reasonable restrictions on 'freedom of speech and expression' in relation to contempt of Court, defamation and incitement of offence.

- * Two conditions have to be satisfied if a restriction is to be held Constitutional:
 - a. it must be reasonable,
 - b. the restrictions must relate to one of the matters mentioned above.
- * whether a restriction is reasonable or not can be decided only by the Courts.
- * restrictions could include prohibition also,
- * freedom of the press falls within 'Freedom of speech and expression' and is therefore available to the same extent.

2. *Freedom of Assembly* [Art.19 (1) & (3)]

- * It includes:
 - a. right to assemble peacefully and without arms,
 - b. right to hold meetings, and
 - c. right to take out processions.
- * These rights are guaranteed subject to three limitations, namely:
 - a. the assembly must be peaceful,
 - b. its members must be unarmed, and

- c. the State may impose reasonable restrictions in the interest of public order, or the sovereignty or integrity of India.

* The State can declare an assembly of 5 or more persons unlawful when it intends to achieve any of the following by means of criminal force;

- a. to overpower the government.
- b. to overpower any public servant in the exercise of his lawful powers.
- c. to take possession of any property.
- d. to deprive any person of the enjoyment of his incorporeal rights.

3. *Freedom to form Associations* [Art. 19 (1) (c) & 19 (4)]

Our Constitution gives all citizens the right to form associations or unions. But the State has power to make reasonable restrictions on this right in the interest of

- i. Sovereignty and integrity of India,
- ii. Public order, and
- iii. Morality.

4. *Freedom to move freely throughout India* [Art. 19 (1) (d) & (5)]

Every citizen has a right to move freely in any part of the Indian territory. But the State can impose restrictions on this right for the following reasons :

- i. In the interest of the general public, and
- ii. For the protection of the interest of any Scheduled Tribes

5. *Freedom to reside and settle in any part of India* [Art. 19 (1) & (5)]

On this right also the State can put reasonable restrictions on the basis of the interest of the

general public and the protection of the interest of any Scheduled Tribes.

6. *Freedom to practise any profession* [Art. 19 (1) (g) & (6)]

Under this, every citizen has the freedom to practise any profession or to carry on any occupation, trade or business of his choice.

Note

- * In the interest of the public welfare, the State can place restrictions on this right.
- * The Article does not guarantee a monopoly to any individual or association to carry on any occupation,
- * Carrying on of any trade, business, industry or service by the State would not be questionable on the ground that it is an infringement of the rights guaranteed by Art. 19 (1) (g).
- * The State may (a) impose reasonable restrictions upon the freedom of trade, business occupation or profession in the interest of the general public; (b) prescribe the professional or technical qualifications necessary for carrying on any occupation trade, business; (c) carry on any trade, business or industry or service, by itself or through a corporation, owned or controlled by the State to the exclusion of private citizens. [Art. 19 (6)]

Can freedom guaranteed under Art. 19 be suspended?

Article 358 provides that during the Proclamation of Emergency, the State including legislative and executive authorities, will be free from the restrictions imposed by Art. 19. In other words during the period of Emergency the provisions of Art. 19 are liable to be suspended.

III. PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES (ART. 20)

This Article guarantees that:

- i. A person must not be convicted of any offence except for the violation of a law in force at the time of the commission of the act;
- ii. A person must not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence [Art. 20 (1)];
- iii. A person cannot be prosecuted and punished for the same offence more than once [Art. 20 (2)];
- iv. A person accused of any offence cannot be compelled to be a witness against himself [Art. 20 (3)].

Note

- * There is no punishment within the meaning of Art. 20 (2) unless it is preceded by prosecution of a criminal nature.
- * Art. 20 (3) grants the privilege against self-incrimination.
- * The expression "to be a witness" is not limited to the evidence given in court, but also covers testimony previously obtained by force from the accused.
- * The protection of Art. 20 (3) also extends to the documentary evidence obtained by force from the accused.

IV. PROTECTION OF LIFE AND PERSONAL LIBERTY (ART. 21)

The Article states:

- * 'No person shall be deprived of his life or personal liberty, except according to procedure established by law'.

- * This Article restrains the Executive from proceeding against the life of personal liberty of the individual except under the authority of law made by the State.
- * When a person is deprived of his life or personal liberty in accordance with a law prescribing a procedure for the same, Art. 21 is not violated. It is for this reason that the confinement of an under-trial prisoner or the arrest and detention of a person by the police under the code of Criminal Procedure is considered legal.

Note

- * This Article confers on the citizen the Fundamental Right to life and liberty, the most cherished and prized possession in a civilised society.
- * It requires that no one shall be deprived of his life or personal liberty, except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary.
- * It is for the Court to decide by the exercise of its power of judicial review, whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or otherwise.

V. PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES (ART. 22)

Under Ordinary Law

1. When a person is arrested, under the ordinary law of the land he must be informed soon after arrested of the grounds of his arrest, and
2. An arrested person must be given the opportunity to consult a lawyer of his choice and to be defended by him [Art. 22 (1)].

3. An arrested person must be produced before a Magistrate within 24 hours of his arrest (excluding the time required for bringing him to the Magistrate).
4. No person can be detained in custody beyond 24 hours without the authority of the Magistrate. [Art. 22 (2)]

Preventive detention [Art. 22 (4) to (7)]

Its main object is to prevent a person from committing an illegal act which is likely to be injurious to the security and safety of State or the interest of the public.

- * Clauses (4) to (7) of Art. 22 impose certain limitations upon the power of the Union and the State Legislatures to make any law providing for detention without trial,
- * Ordinarily a person cannot be detained for more than 2 months unless the detention is approved by an Advisory Board.
- * A State law cannot authorise detention beyond the maximum period prescribed by Parliament under the powers given to it under Art. 22.
- * Parliament may by law prescribe the circumstances or type of cases in which a person can be detained beyond 2 months without the consent of the Advisory Board.
- * A person detained under a preventive detention law has a right to obtain information about the reasons of the detention and to make a representation protesting against the order of detention.

Powers of the Courts

- i. The Court can examine the Constitutional validity of the law on preventive detention

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- ii. It may also examine the grounds of detention to see whether they are relevant to the order.
- iii. It can interfere with the order if it is *mala fide*.
- iv. The Court may inquire about the grounds conveyed to the detainee to see if they are sufficient to enable him to make an effective representation.

VI. RIGHTS AGAINST EXPLOITATION (Art. 23-24)

These Articles prohibit

- a. Any form of forced labour, and
- b. Children below 14 working in factories or mines or in any other hazardous employment.

But the State can impose compulsory service for public purposes without making discrimination on anyone on grounds only of religion, race, caste or class etc.

VII. RIGHT TO FREEDOM OF RELIGION (Art. 25-28)

1. *Freedom of conscience and free profession of religion*

India is a Secular State. Equal rights are therefore given to all citizens in respect of freedom of conscience and religion.

Art. 25 (1) provides that

- i. all persons are equally entitled to freedom of conscience and,
- ii. all have the right to freely profess, practise and propagate religion, subject to public order, morality and health.

* But the State has power to make laws: (1) to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice; (2) to

provide for social welfare and reform; or (3) to permit all classes and sections of Hindus to enter into Hindu religious institutions of a public character.

- * The wearing and carrying of Kirpans is included in the profession of Sikh religion.
- * References to Hindus, includes persons professing the Sikh, Jain or Buddhist religion.

2. *Freedom to manage religious affairs (Art. 26)*

Subject to public order, morality and health, every religious denomination or any section has the right:

- a. to establish and maintain institutions for religious and charitable purposes;
- b. to manage its own affairs in matters of religion;
- c. to own and acquire movable and immovable property, and
- d. to administer the property in accordance with law.

3. *Freedom as to payment of taxes for promotion of any particular religion (Art. 26)*

This Article secures that the public funds raised by taxes shall not be utilised for the benefit of any particular religion or religious denomination. Suppose the State imposes tax for the promotion of say Hindu religion, it would be quite lawful for a person to refuse to pay such tax.

4. *Freedom as to attendance at religious instructions (Art. 28)*

- * Religious instruction is forbidden in educational institutions wholly maintained by State funds.
- * Institutions which are maintained or aided by the State cannot compel anyone to attend religious worship conducted in these institutions.

VIII. CULTURAL AND EDUCATIONAL RIGHTS (Art. 29-30)

1. *Protection of interests of minorities (Art. 29)*

- a. Any section of citizens residing in India and having its distinct language, script or cultures has the right to conserve the same.
- b. Educational institutions maintained or aided by the State cannot deny admission to any citizen on grounds only of religion, race, caste and language.

2. *Right to minorities to establish and administer educational institutions (Art. 30)*

This Article guarantees:

- a. All minorities based on religion or language have a right to establish and administer educational institutions of their choice,
- b. In granting aid, the State cannot discriminate against educational institutions managed by minorities based on religion or language.

Rights of minorities based on Religion and Language

- * Religious and Linguistic minorities have the same rights under Art. 30 (1).
- * Admission of students from other communities to educational institutions conducted by minority communities does not affect the minority rights of that institution.
- * Right to establish educational institutions of their choice includes the right to establish and conduct educational institutions for general secular education and schools and colleges.
- * Freedom of choice of the medium of instruction in educational institutions is also guaranteed by Art. 30 (1).
- * The right given to minorities is a positive one giving special privileges. Any unreasonable

abridgement of it is unconstitutional. The minority rights are subject to reasonable restrictions in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order etc.

- * Affiliation though not provided for in Art. 30 cannot be denied to a minority institution without sufficient reason.
- * This right cannot be lost by its non-use. It cannot be effectively waived either.
- * Only if a minority community has established an institution does it have the right of administering it, under Art. 30 (1).
- * The right to administer means the effective administration of the affairs of the educational institution and it does not include the right to mal-administer.
- * The minority communities have the right to form their own Governing Bodies to manage their educational institutions without interference from the State.
- * Although the State has no power to interfere in the internal management of the minority institution, it has power to make regulatory measures to ensure the excellence of the institution and to issue guidelines to guarantee security of service to teachers.

Is Right to property a Fundamental Right?

Till 1977, right to property was held to be one of the Fundamental Rights in the Constitution. The 44th Constitutional Amendment removed the right to property from Part III (the Chapter on Fundamental Rights) by deleting Articles 19 (1) (f) and 31 and by inserting in Part XII a new chapter IV on right to property under Art. 300 A. Art. 300 A states: "No person shall be deprived of his property save by authority of law".

Note

The right to property is no longer a Fundamental Right but only a legal right. This change would not affect the right of minorities to establish and administer educational institutions of their choice.

Saving of laws providing for acquisition of estates (Art. 31 A)

A law made by the State regarding:

1. acquisition of any estate, extinguishment or modification or any rights related to the estate, or
2. taking over the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
3. amalgamation of two or more corporations for proper management or public interest,
4. removal or modification of any rights of managing agents, secretaries, managing director, director and managers of corporations or of any voluntary rights of shareholders, or
5. the extinguishment or modification of any rights arising from any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil or the premature termination or cancellation of any such agreement, lease or licence,

cannot be declared void on the ground that it takes away or abridges any of the rights conferred by Arts. 14 & 19.

Note

- * If a law regarding the above matters is enacted by a State Legislature it cannot be enforced without the assent of the President.
- * The State through legal provision cannot

acquire an estate in which a person, holds land within the ceiling limit for personal cultivation, and has building or structures, unless he is paid adequate compensation for the land or building at a rate not less than the market value.

Validation of certain Acts and Regulations (Art. 31 B)

Art. 31 B provides that certain Acts and Regulations specified in the ninth Schedule to the Constitution relating to the acquisition of estates and modification of rights therein cannot be made void on the ground that it infringes any of the Fundamental Rights guaranteed by the Constitution.

This article was incorporated in the Constitution to remove the Zamindari system and to remove all Constitutional obstacles to land reforms.

Saving laws giving effect to certain Directive Principles (Art. 31 C)

According to this new Article introduced in the Constitution through the 25th Amendment any law made for the promotion of all or any of the Directive Principles cannot be considered invalid on the ground that it infringes any of the rights conferred by Arts. 14 & 19.

Note on Directive Principles of State Policy

- * They form part IV of the Constitution.
- * They are considered fundamental principles in the governance of the country and it is the duty of the State to apply these principles in making laws for socio-economic and cultural reforms.
- * They indicate the policy which the Union and States ought to follow, but they cannot be enforced through legal action in the Courts.

Conflict between Directive Principles and Fundamental Rights

The Supreme Court has held that in case of irreconcilable conflict between the two, the Fundamental Right shall prevail.

The Court proposed that an attempt must be made always to harmonise the two and the State, while implementing these principles, should take care to see that the Fundamental Rights are also protected at the same time.

IX RIGHT TO CONSTITUTIONAL REMEDIES (Arts. 32-35 & 359)

The Constitution of India guarantees not only Fundamental Rights but also adequate provisions to enforce them. Accordingly, the right to enforce all the Fundamental Rights is itself made a Fundamental Right in the Constitution, under Art. 32.

Note

- a. every citizen has the right to move the Supreme Court for the enforcement of the Fundamental Rights [Art. 32 (1)].
- b. The Supreme Court has the power to issue directions or orders or writs including writs in the nature of

habeas corpus,
mandamus,
prohibition,
quo warranto, and
certiorari,

whichever is appropriate, for the enforcement of any of the Fundamental Rights under Art. 32 (2).

- c. Parliament has the right to appoint any other Courts to exercise power and function mentioned in Art. 32 (2) and Art. 32 (3).

CONSTITUTIONAL REMEDIES

1. *Writ of Habeas Corpus* (to have the body)

- * This writ is one of the most important safeguards of the liberty of a person. This remedy is always available in case of deprivation of personal liberty or an illegal detention. On an application, the Court is empowered to direct that the detained person be produced before it and is entitled to enquire into the grounds of his detention. If the Court is satisfied that such detention is illegal, it can order the immediate release of that person.
- * This writ is meant only to determine the legality or illegality of a detention.
- * Normally, it is for the arrested person to make an application for "*habeas corpus*". But if for any reason he is unable to do so, a relative or a friend can also make an application for his release.
- * Under Art. 226 High Courts, too, have power to issue writs for the enforcement of Fundamental Rights and for any other purpose.
- * Reasons which can prompt the court to issue writs of "*habeas corpus*" are
 - i. the law under which the detention is made is invalid (*ultra vires*)
 - ii. the law under which the order of detention has been made violates Arts, 14, 19, 22 (1), 22 (2), 22 (5) etc. of the Constitution;
 - iii. the authority who issued the order of detention has no jurisdiction;
 - iv. the intention of the authority is *mala fide*;
 - v. the detention is without any legal justification,

- * See the specimen form of "habeas corpus" petition on page 24.

2. *Writ of mandamus* (we command)

A writ of *mandamus* is a command directed by the Supreme Court or High Court to any person, corporation, inferior court or tribunal, compelling them to do something specific pertaining to their office and duty. It commands the person, to whom it is addressed to perform some public or judicial duty which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy.

When are writs of mandamus issued?

A writ of *mandamus* may be issued under the following circumstances:

1. the petitioner must have the legal right to compel the performance of some legal duty owing to him by the respondent.
2. The legal right of the applicant must be existing on the date of his application.
3. The duty imposed on the opposite party must be one emerging from a statute. It cannot be issued to enforce departmental instructions or orders not having any statutory force.
4. The Petitioner must satisfy that he has already demanded the performance of his duty but the authority has refused to act.
5. He must also satisfy that there is no effective alternative remedy.

3. *Writ of Prohibition*

- * It is also known as 'judicial writ'.
- * It is issued by a superior Court to an inferior Court to prevent it from exercising jurisdiction with which it is not legally vested. In other words it compels the courts entrusted with

judicial duties to keep within the limits of jurisdiction.

- * It is issued in respect of pending proceedings forbidding the tribunal or the Court from continuing the proceedings.
- * A writ of prohibition may be issued on an application supported by an affidavit.
- * If a judge or any party proceeds with the case in spite of writ of prohibition, contempt of Court proceedings can be started against the person concerned.

4. Writ of "Quo Warranto" (by what order)

- * It is issued to prevent illegal assumption or use of public office by anybody.
- * It is issued against a person who claims or usurps any office, franchise or liberty.
- * The writ requires the person to show on what authority he supports his claim. It can oust him from the office if the claim is not well founded.
- * It is in the nature of an injunction.

Conditions requisite for the issue of Quo warranto

1. The office must be public.
2. The office must have been created by a statute or by the Constitution itself.
3. The respondent must have assumed the office on his own.
4. The respondent is not appointed to the office in accordance with the law, or he is not legally qualified to hold the office.
5. The respondent continues to exercise the office till the date of the application.

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5. *writ of Certiorari* (to be more fully informed of)
This writ is issued by a Court and is directed to the judge or other officers of its subordinate court. It requires the subordinate Court to transfer the record of a proceeding pending before it to the Superior Court to be tried there, in order to ensure the applicant sure and speedy justice. In India the writ of "*certiorari*" is mostly used for quashing the decision of the inferior Courts or Tribunal.

When can the Fundamental Right be suspended?

- * While the proclamation of Emergency is in operation the Fundamental Rights conferred on citizens by Art. 19 will remain suspended. Besides, under Art, 359, when the proclamation is in operation the president may declare the suspension of the right to move any Court for the enforcement of the Fundamental Rights. Such an order of the president must be laid before each House of parliament for their approval.
- * At normal times, the Constitution allows the State to impose reasonable restrictions on the Fundamental Rights on grounds of the sovereignty and integrity of India, the Security of the State, public order, decency, morality etc.
- * To maintain discipline and to ensure the proper discharge of their duties, the Parliament is empowered to restrict or abrogate the Fundamental Rights of Armed Forces and Forces charged with the maintenance of public order.
- * Parliament has power to suspend Fundamental Rights of citizens residing in areas under martial laws. This gives right to soldiers and other forces to violate Fundamental Rights in

the course of the discharge of their duties (Art.34).

Power of Judicial Review

In India, the power of Judicial review is vested in the Supreme Court and High Courts, under Arts. 32 and 226. By the exercise of this power the Supreme Court can examine the Constitutional validity of a legislation and declare it invalid if it violated Constitutional safeguards.

Art. 13 of the Constitution provides that if any law, rule or order, which is inconsistent with part III of the Constitution, is void. Under Art. 32 the Supreme Court and under Art. 226 High Courts can give relief in the nature of writs to any individual whose Fundamental Rights are infringed. These Courts can also examine whether restrictions imposed on Fundamental Rights are reasonable and whether they are imposed in the interest of certain subjects like public morality, order etc.

Power under Arts 32 and 226

The Supreme Court, under Art. 32 has power to issue directions, or orders, or writs for the enforcement of Fundamental Rights only, but under Art. 226 the High Courts have the power to issue order, or writs for the enforcement of Fundamental Rights and for any other purpose.

For the purpose of enforcement of Fundamental Rights a citizen may either move the High Court or Supreme Court as their Jurisdiction is concurrent in this matter. A person, whose petition is dismissed by the High Court, cannot move the Supreme Court under Art, 32 on the basis of the same facts.

Has the parliament power to abridge the Fundamental Rights?

In Swami Kesavananda Bharati's case, in 1973 the Supreme Court held that the Parliament has power to amend the Fundamental Rights including property rights. However it has emphatically ruled that Art.368 does not empower Parliament to alter 'the basic structure' or framework of the Constitution.

A Specimen form of the writ of *Habeas Corpus*

In the Supreme Court of India

(Original Jurisdiction)

Writ Petition No.555 of 1982

Under Article 32 of the Constitution.

Mr. ABC, age, residing at Motibagh, Delhi

Petitioner

Versus

Union of India

Respondent

To

The Hon'ble Chief Justice of India and His
Companion Justices of the Supreme Court of
India.

The humble petition of the above-named
petitioner most respectfully sheweth:

1. That the petitioner is a peaceful citizen of India working as a Journalist attached to "Bharat Express" newspaper, Delhi
2. That on 20th of July 1982, the petitioner was arrested and detained in Tihar Jail, Delhi by an order of the Commissioner of Police, dated 18th July 1982 passed under the provisions of the National Security Act 1980.
3. That in spite of repeated demand the grounds of detention and other relevant materials were furnished to the petitioner only on 15th of August 1982 i.e. 26 days after his arrest.
These grounds were;

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1. On the Law of Abolition of Untouchability
2. On Your Rights if Arrested
3. The Rights of Wife, Children and Parents for Maintenance
4. Do You Know Your Fundamental Rights?

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